IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 504 of 1994
with
CIVIL APPLICATION NO. 4348 OF 2001 AND
CIVIL APPLICATION NO 4044 OF 1997

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJKOT MUNICIPAL CORPORATION

Versus

PUNJABHAI RATUBHAI WAGHELA

Appearance:

1. Special Civil Application No. 504 of 1994
Ms. Kerrawala for MR BP TANNA for Petitioner No. 1
MR PV HATHI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 20/01/2004

ORAL JUDGEMENT

Heard learned advocate Ms. Mahrook N. Kerrawala for Mr. B.P.Tanna for the petitioner Corporation and Mr. P.V.Hathi, learned advocate for the respondents in this petition. By means of this petition under Article 227 of the Constitution of India, the petitioner Corporation has challenged the legality, validity and propriety of the impugned award made by the labour court in Reference No. 566 of 1985 dated 30th November, 1992 wherein the labour court has set aside the impugned order of termination and has also granted reinstatement with continuity of service with 60% backwages for the intervening period. The labour court has clarified that alternatively, if the workman has crossed the age of superannuation, then, he should be paid all the benefits of back wages from the date of the impugned order of termination till the date of his superannuation with continuity of service.

During the course of hearing, it was submitted by the learned advocate Ms. Kerrawala for the petitioner that the workman remained absent for more than two years without prior permission of the corporation and that during the said period of two years, he produced medical certificate which was subsequently found false by the corporation. He adopted illegal means in submitting leave application alongwith false medical certificate and thereby he cheated the corporation. She submitted that this being the serious charge against the workman, after serving him charge sheet and after completing proper departmental inquiry, ultimately, instead of dismissal, order of removal was passed on 31st August, 1984 which was challenged by the said workman before the labour court and the labour court ordered for his reinstatement with 60 per cent back wages for the intervening period with clarification as aforesaid. She submitted that the labour court has committed gross error in granting the relief in favour of the workman. She has also submitted that the labour court has committed gross error in not considering the seriousness of the charge levelled against the workman who has remained absent for a period of two years without prior permission and with the help of false certificate, cheated the corporation and, therefore, the labour court ought not to have granted any relief in favour of such a workman. According to her submission, the punishment imposed by the corporation was just and proper and fair and was requiring no interference by the labour court. She further submitted that the labour court committed error in exercising the powers under section 11-A of the ID Act, 1947. She also clarified that the respondent has retired from service on 30th April, 1992. She also emphasized that once inquiry has been admitted by the workman, the labour court ought

not to have considered the merits of the matter and quantum of punishment. It was her submission that once the inquiry has been admitted, then, the offence can be considered to have been proved and, therefore, there is no necessity to interfere with the ultimate order of punishment imposed by the disciplinary authority and in view of that, the labour court ought not to have exercised the powers under section 11A of the ID Act, 1947. Except these, no other submissions were made by Ms. Kerrawala on behalf of the petitioner.

On the other hand, learned advocate Mr. Haathi appearing for the respondent workman submits that the legality, validity and propriety of the departmental inquiry was admitted by the workman before the labour court. He however emphasized that the dismissal order dated 31st August, 1984 was passed by the corporation with retrospective effect from 24th April, 1981. Reliance was placed by him on the decision of the Punjab High Court reported in 1989 SLC 157 in the matter of State of Punjab versus Amarjitsing and SLR page no. 188 Satyendrajitsing versus Chief Administration and submitted that the order of removal with such retrospective effect itself is enough for quashing and setting aside. He also submitted that the workman had completed more than 30 years service and in past, there is no bad record in the credit of the workman. He also submitted that while passing the award in favour of the workman, considering the gravity of misconduct while keeping in view his past 30 years clean record, by way of punishment, the labour court has denied 40 per cent of the back wages for a long period from 1984 till the date of retirement of the workman as there was no question of his reinstatement and while exercising the powers under sec. 11A of the ID Act, 1947, the labour court can impose appropriate punishment and in this case, 40 per cent of the back wages was denied by way of punishment and such an award of the labour court is just and proper award based on the appreciation of the evidence on record and in doing so, the labour court has not committed any jurisdictional error and/or procedural irregularity and, therefore, this court should not interfere with such an award. He further submits that the workman has retired long ago, in the year 1992 and this is also one factor required to be kept in mind while examining the award. Learned advocate Mr. Hathi also submitted that the calculation produced by the corporation as regards back wages comes to Rs.70,000.00 as per the directions of the labour court and the same was deposited by the corporation before the labour court and, thereafter, this court passed order on 16th September, 1994 permitting the

workman to withdraw the amount deposited after furnishing security to the satisfaction of the labour court and it was without prejudice to the rights and contentions of the parties. Learned advocate Mr. Hathi also submitted that the said amount of Rs.70000.00 was withdrawn by the respondent workman after giving proper security to the satisfaction of the labour court concerned. He also submitted that the charge of remaining absent for a period of two years and that of production of false medical certificate was considered by the labour court. He further submitted that the labour court was of the view that the extreme punishment of removal or dismissal cannot be inflicted upon the workman at the first instance when his past is dotless. He further submits that the labour court has also considered that even as per section 56(2) of the Bombay Provincial Municipal Corporations Act also, extreme punishment cannot be imposed upon the workman at the first instance. He also submitted that the labour court has also considered that the impugned order of removal was having effect of such removal from 24th April, 1981 and such retrospective effect itself was enough for quashing and setting aside such an order of removal. He further submitted that after the legality and validity of the departmental inquiry is admitted by the workman, the labour court is competent enough to exercise the powers under section 11A of the ID Act, 1947 and while exercising such powers, the labour court is also competent enough to consider as to whether the quantum of punishment imposed by the disciplinary authority is proper or not and whether the disciplinary authority is justified in imposing such a harsh punishment of removal or not and in the facts and circumstances of the case, considering the past 30 years record of the workman, the labour court was of the view that the authority was not justified in imposing such harsh punishment and, therefore, and also considering the retrospective effect given to the order of removal dated 31.8.1984, the labour court is justified in making the award in question and in doing so, the labour court has committed no jurisdictional error or procedural irregularity and, therefore, there is no substance in this petition and the same is, therefore, required to be dismissed. In support of these submissions, reliance was placed by him on the decision of the apex court in the matter of SCOOTER INDIA LIMITED VERSUS LABOUR COURT, LUCKNOW reported in AIR 1989 SC 149.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question made by the labour court. I have also perused averments made by the petitioner and the

reply filed by the workman. At this stage, it is necessary to consider that during the pendency of the petition, contempt proceedings were initiated by the workman before this court by filing MCA No. 1901 of 1993 wherein the Division Bench of this court has passed the following order on 29th December, 1993:

"Notice returnable on 17.1.1994.

By the judgment and award dated 4.12.1992, the Labour Court had directed the respondent corporation to reinstate the petitioner with back wages within one month of the publication of the award. The respondent corporation was also given a notice for compliance on 25.2.1993. It is stated that inspite of the above, the corporation has not complied with the award of the Labour Court and has disobeyed the award of the Labour Court It is also stated that there is no stay of the award.

It is, therefore, directed that a responsible and conversant officer of the respondent corporation shall remain present before this court at the hearing of this matter unless the award of the Labour Court is complied with. The respondent corporation is also directed to produce on record a computation of the amounts payable under the award on 17.1.1994. "

From the perusal of the award in question, it appears that the labour court has also considered that even as per section 56(2) of the Bombay Provincial Municipal Corporations Act also, extreme punishment cannot be imposed upon the workman at the first instance; the labour court has also considered that the impugned order of removal was having effect of such removal from 24th April, 1981 and such retrospective effect itself was enough for quashing and setting aside such an order of removal. According to my opinion, once the legality and validity of the departmental inquiry is admitted by the workman, the labour court is competent enough to exercise the powers under section 11A of the ID Act, 1947 and while exercising such powers, the labour court is also competent enough to consider as to whether the quantum of punishment imposed by the disciplinary authority is proper or not and whether the disciplinary authority is justified in imposing such a harsh punishment of removal or not and in the facts and circumstances of the case, considering the pas 30 years record of the workman, the labour court was of the view that the authority was not

justified in imposing such harsh punishment and, therefore, and also considering the retrospective effect given to the order of removal dated 31.8.1984, according to my opinion, the labour court is justified in making the award in question and in doing so, no error has been committed by the labour court as it has refrained itself from granting full back wages and has granted only 60 per cent of the back wages while denying remaining 40 per cent of the back wages by way of punishment. I have also considered the decision of the apex court in the matter of SCOOTER INDIA LIMITED VERSUS LABOUR COURT, LUCKNOW reported in AIR 1989 SC 149. In the said matter, the apex court has held that the labour court can exercise the powers under sec. 11A of the ID Act after considering the facts of the case on hand. Relevant observations made by the apex court in the said decision are reproduced as under:

"7. The High Court has considered at length the nature of the powers conferred on the Labour Court by section 6(2A) of the Act for setting aside an order of discharge or dismissal of a workman and substituting it with an order of lesser punishment and as such, it cannot be said that the High Court has has failed to consider the facts in their entirety. As regards the third contention, we may only state that the Labour Court was not unaware of the nature of charges framed against the respondent or the findings rendered by the Inquiry Officer and the acceptance of those findings by the Disciplinary Authority. The Labour Court has observed as follows:

"The workman has unfortunately to blame himself for much of the bad blood which has developed between him and the Management and therefore his conduct, motivated by ideals which are not relevant has been far from satisfactory. In so far as it was rough, bordering on rudeness and with highly exaggerated sense of his duties. In these circumstances, it will meet the ends of justice if back wages to the extent of 75% are allowed to the workman. I would make my award accordingly but shall be no order as to costs."

It cannot therefore be said that the Labour Court had exercised its powers under Section 6(2A) of the Act in an arbitrary manner and not in a

judicial manner. The Labour Court has taken the view that justice must be tempered with mercy and that the erring workman should be given an opportunity to reform himself and prove to be a loyal and disciplined employee of the petitioner Company. It cannot therefore be said that merely because the Labour Court had found the enquiry to be fair and lawful and the findings not to be vitiated in any manner, it ought not to have interfered with the order of termination of service passed against the respondent in exercise of its powers under section 6(2A) of the Act."

Considering the facts of the present case, the workman has completed more than thirty years' service and his past was clean and no misconduct was committed by the workman and even it was not the case of the corporation either before the labour court or before this Court also. It is well settled principle of law that before imposing punishment of dismissal or removal, it is necessary for the disciplinary authority to consider the family back ground, economic back ground of the delinquent, length of service put in by such an employee, his past and other surrounding circumstances including the compelling circumstances for committing the misconduct. According to this Court's opinion, these are the factors relevant and would require consideration by the disciplinary authority before imposition of the punishment upon the delinquent. This aspect has been considered by the Division Bench of this Court in the matter of GUJARAT STATE ROAD TRANSPORT CORPORATION V. DANAJI SUKAJI KODIYAR reported in 1994 (1) GLR page 87. In para 6 of the said judgment, it has been observed by the Division Bench as under:

"6. The decision of this Court referred to hereinabove does not lay down any principle that while exercising powers under sec. 11-A of the Act, the Labour Court or the Tribunal is bound to impose some punishment. What punishment should be imposed is ordinarily a question to be decided on the basis of facts and circumstances of each case and particularly the individual circumstances of the delinquent concerned. His family background, his socio-economic background, his service record and the surrounding circumstances in which he might have been compelled to commit the misconduct are some of the facts which are required to be taken into consideration while deciding the question of punishment. These factors would naturally vary

> from case to case and from individual to individual. Depending upon then facts and circumstances of the case, this Court thought it proper that the Labour Court ought to have imposed some punishment provided under the service rules. Division Bench of this Court has not interpreted the provisions of Sec. 11A of the Act and has not considered the question as to whether the Labour Court or the Tribunal is bound to impose punishment whenever it considers that the order of discharge or dismissal from service was not justified and reinstatement was required to be ordered. It is true that this Court has observed that withholding of back wages is not an order of punishment and the Labour Court ought to have passed some order of punishment provided under the service rules. But these observations are required to be read in the background of the facts and circumstances of the case and are required to be confined to the facts and circumstances of the case because this Court did not consider the width and amplitude of the power of the Labour Court and that of the Tribunal under sec. 11-A of the Act and in fact this Court has not considered the provisions of Sec. 11-A of the Act. Therefore, the aforesaid observations made by this Court in the background of the facts of that case cannot be read as universal proposition of law laid down by this Court. This is the only correct way of reading the judgment of this Court."

The Labour Court has, in support of its conclusion, given finding that considering 30 years' service and denial of 40 % backwages is sufficient punishment to the workman and also considering the fact that the workman is at the verge of retirement and might have retired during the pendency of the proceedings before it, has refrained it from granting full back wages and instead of that, granted only 60 per cent of the back wages. Therefore, it cannot be said that the labour court has not applied its mind to the facts of the case and it also cannot be said that the labour court has not considered the charges levelled against the workman. As per this COurt's opinion, the labour court has given consideration to the entire facts of the case which includes charges levelled against the workman and the past clean record of the workman of 30 years and the fact that the workman was retiring or might have retired during the pendency of the proceedings before it and after considering all these circumstances, the labour

court has exercised the powers under Sec. 11-A of the Act and, therefore, according to my opinion, the labour court has properly applied its mind in respect of its conclusions.

The apex court has considered this aspect in case of Jitendra Singh Rathor versus Shri Baidyanath Ayurved Bhavan Ltd. reported in AIR 1984 SC 976 wherein it has been held that where the tribunal/labour court while directing reinstatement withheld payment of half of the back wages keeping in view the proved misconduct of the employer, withholding of half of the back wages in the nature of penalty, in such a case, it could not be said that the relief of reinstatement was being granted on terms of withholding of half of the back wages and, therefore, did not constitute penalty. In para 3 and 4 of the said decision, it has been observed by the apex court as under:

"3. While discretion is vested in the Tribunal under this provision and in a given case on the facts established the tribunal can vacate the order of dismissal or discharge and give suitable directions. It is a well settled principle of law that when an order of termination of service is found to be bad and reinstatement is directed, the wronged workman is ordinarily entitled to full back wages unless for any particular reason the whole or a part of it is asked to be withheld. The Tribunal while directing reinstatement and keeping the delinquency in view could withhold payment of a part or the whole of the back wages.In our opinion, the High Court was right in taking the view that when payment of back wages either in full or part is withheld, it amounts to a penalty. Withholding of back wages to the extent of half in the facts of the case was, therefore, by way of penalty referable to proved misconduct and that situation could not have been answered by the High Court by saying that the relief of reinstatement was being granted on terms of withholding of half of the back wages and, therefore, did not constitute penalty.

4. Under S.11A of the Act, advisedly, wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The High Court under Art. 227 of the Constitution does not enjoy such power though as a superior court, vested with the

right of superintendence. The High Court is indisputably entitled to scrutinise the orders of subordinate tribunals within the well accepted limitations and, therefore, it could in an appropriate case quash the award of the tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. The High Court is not entitled to exercise the powers of the tribunal and substitute an award in place of toe one made by the tribunal as in the case of an appeal where it lies to it. In this case, the tribunal had directed the reinstatement, the High Court vacated the direction of reinstatement and computed compensation of rupees 15,000.00 in lieu of restoration of service. We are not impressed by the reasoning of the High Court that reinstatement was not justified when the tribunal in exercise of its wide discretion given under the law found that such relief would meet the ends of justice. The Tribunal had not recorded a finding that there was loss of confidence of the employee. The job of a librarian does not involve the necessity of enjoyment of any special confidence of the employer. At any rate, the High Court too did not record a finding to that effect. Again, there is no indication in the judgment of the High Court as to how many years of service the appellant had put in and how many years of service were still left under the Standing Orders. The salary and other service benefits which the appellant was receiving also did not enter into the consideration of the High Court while computing the compensation. We are, therefore, of the view that the High Court had no jurisdiction to interfere with the direction regarding reinstatement to service and in proceeding to substitute the direction by quantifying the compensation of Rupees 15000/- it acted without any legitimate basis. "

Considering the entire facts and circumstances of the case, now the workman who has put in more than thirty years clean service has now already retired in the year 1992, on 30.4.1992. The amount of 60 per cent of the back wages deposited by the petitioner corporation as per the award in question has been withdrawn by the workman and thereafter more than ten years have gone. Considering the fact that the impugned order of removal was passed by the corporation with retrospective effect, according to my opinion, it was bad in law and was

rightly set aside by the labour court. Considering his past 30 years' service wherein no misconduct were committed, the corporation ought to have taken some lenient view before imposing the extreme punishment of removal. Therefore, according to my opinion, considering the entire facts and circumstances of the case, I do not find any fault with the impugned award made by the labour court. Therefore, after this much period, if this court will slightly disturb the impugned award, it would result in an adverse situation for the workman. Therefore, according to my opinion, the labour court was justified in making the award in question and was right in setting aside the order of removal and was also right in granting the back wages to the extent of 60 per cent and in doing so, it has not committed any jurisdictional error or procedural irregularity.

Recent decision of the apex court in the matter of KAILASH NATH GUPTA V. ENQUIRY OFFICER (RK RAJ) ALLAHABAD BANK AND OTHERS reported in 2003 LAB. IC 2290 is also relevant in the facts and circumstances of the present case. It was a matter relating to the powers under sec. 11A of the ID Act, 1947. The apex court has, after considering the proportionality of punishment, determination, power of court to interfere with punishment imposed by the disciplinary authority, held as under in para 10 and 11 of the said judgment:

"10. It is also further stated in the same judgment that, "High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary auhority/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself appropriate punishment with cogent reasons in support thereof.

11. In the background or what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly,the Court can direct reconsideration or in an appropriate case to shorten litigation,indicate the punishment to be awarded. It is stated that there was no

> occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject matter of his removal from service. The stand of the appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the bank (which he quantifies at about Rs.46000/-) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most, there is some procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service."

In light of the aforesaid decision also and in light of the facts of the present case, the corporation was not justified in imposing the extreme punishment of removal upon a workman who was having thirty years' past clean record. It is more so when the impugned order of removal was having retrospective effect and in view of that, the labour court was justified in making the award in question and the same would not warrant any interference of this court in exercise of the powers under Art. 227 of the Constitution of India.

Recent decision of the Division Bench of this Court in the matter of GSRTC & Anr. versus Mahurkumar I. Shaherwala reported in 2003 II CLR 198 is also required to be considered in light of the facts of the present case. In the said matter, the respondent was dismissed from service on being found guilty of financial irregularities. Award of reinstatement with full back wages was made by the labour court in his favour. Writ filed by the GSRTC was dismissed and thereafter, in the Letters Patent Appeal filed by the GSRTC, it was held that the proceedings and standard of proof required in domestic enquiry lenient than the one required in criminal trial. In the said matter, the allegations levelled against the delinquent were more serious than the allegations made against the workman in this case and considering the seriousness of such allegations, ultimately, the Division Bench of this Court reduced the backwages to 50 % and with such modification, it disposed of the matter. In this case, the labour court itself has taken care of that aspect and has therefore granted only 60 per cent of the back wages considering the charges levelled against the workman and also considering that the workman might have retired or would be on the verge

of retirement and therefore the back wages was the only effective relief and it therefore granted it to the extent of 60 per cent. Therefore, the award of the labour court is also just and proper in light of the facts of this case and in light of the said decision of the division bench of this Court.

This Court is having very limited jurisdiction under Article 226 and/or 227 of the Constitution of India. It is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. Recently, this aspect has been considered by the apex court in the matter of SYED T.A. NAQSHBANDI AND OTHERS V. STATE OF JAMMU & KASHMIR AND OTHERS reported in [2003] 9 SCC 592. Relevant observations made in Head Note [H] are reproduced as under:

> "Judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the material by the Courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions. Grievances must be sufficiently substantiated to have firm or concrete basis on properly established facts and further proved to be well justified in law, for being countenanced by the court in exercise of its powers of judicial review. Unless the exercise of power is shown to violate any other provision of the Constitution of India or any of
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> challenged by making it a justiciable issue before Courts."

Therefore, in view of the aforesaid discussion, this petition is required to be dismissed. Same is, therefore, dismissed. Rule is discharged. Interim relief shall stand vacated with no order as to costs.

In view of these orders passed by this Court in the main matter, Civil Application No. 4348 of 2001 and 4044 of 1997 are also disposed of with no order as to costs.

Dt. 20.1.2004. (H.K. Rathod,J.)

Vyas